



VIA FAX (517-373-7158)

April 13, 2015

Rep. Klint Kesto, Chair, Judiciary Committee  
and Judiciary Committee Members  
Attn.: Ms. Welpert, Clerk  
Michigan House of Representatives  
Rm. 521  
House Office Building  
Lansing, Michigan 48909

RE: HB 4234 Law Enforcement Body-Worn Camera Privacy Act

Dear Committee Members:

Body-worn cameras are a great tool for law enforcement officers. The video and audio from these cameras can protect them from false claims of brutality and misconduct and insulate communities and taxpayers from expensive police brutality litigation and judgments. It can also restrain them from being overly aggressive in their dealings with citizens.

The use of body-worn cameras by a number of law enforcement agencies across the country has shown significant reductions in police use of force and bogus citizen complaints against police officers. A pilot study in Rialto, California supported by the Police Foundation details the value of this program (<http://www.policefoundation.org/content/body-worn-cameras-police-use-force>). In Seattle, all the raw videos from police body cameras are uploaded to YouTube without audio and with citizens' face being blurred.

As currently drafted, HB 4234 would jeopardize the public health, safety and welfare of citizens, provide undeserved protection and cover for the few bad actors in the Michigan law enforcement community, and further compromise the already poor public perception of police agencies and their dealings with persons of color, particularly the black men in the state.

**Michigan should not legislate hiding this important knowledge from its citizens by exempting these video and audio records from disclosure under the state's Freedom of Information law. Exempting this law from the FOI requirements removes any chance of impartial, neutral judicial review of exemptions as provided by the FOIA.**

We suggest the following changes to Substitute HB 4234.



**Section 3: Delete.** There is no need to specifically exempt from the current FOIA video and audio recordings from police body-worn cameras involving police actions in private places. This section, as written, could permanently bar the individuals involved from obtaining audio and video recorded during a police action. Even a judge could not order disclosure under a FOIA lawsuit, so there is no neutral party allowed to review police actions. Preventing disclosure of body-camera recordings of so-called "welfare checks" could be specifically addressed in the definition section of the bill.

**Section 4: Rewrite** to permit individuals, parents of minors, legal guardians and attorneys of individuals involved in a private place search by law enforcement to have an affirmative right to the raw audio and raw video recordings without filing a FOIA request and for no charge. As written, these individuals could not access these recordings under FOIA and FOIA exemptions could block their request even if FOIA was involved. There should be no charge for one copy. To do otherwise may well jeopardize their right to due process.

**Section 5: Delete.** There is no need to specifically exempt from the current FOIA video and audio from police body-worn cameras. The bill says specifically that these recordings are "not a public record" and are "exempt from disclosure under the" FOIA. The addition of the language following (... "but only to the extent that disclosure as a public records would do any of the following...") creates a conflict within the language of the section and does not negate our interpretation. (I discussed this with Rep. Runestad's staff person, Joseph Martin.) The FOIA already has provisions for exemptions for ongoing criminal investigations. The specific language in this section, as currently drafted, could permanently hide from public scrutiny the recordings taken in public places that could be observed by anyone present. We would suggest language that says these recordings are public records under FOIA and the existing Section 13 law enforcement exemptions could apply.

Even a court review, as provided under the FOIA law, could not occur due to this specific affirmative statement in Section 5 that these recordings are "not a public record" and are "exempt from disclosure" under FOIA. Courts interpret laws, and this is a likely interpretation.

Further, the wording in this section could be interpreted to allow police to collect, as evidence, raw video and audio from cell phones and other recording devices operated by citizens and news media without any provisions for them to be disseminated if law enforcement chooses otherwise.

**Section 6: Modify.** Thirty days is a very brief period of time in some ongoing criminal investigations or internal affairs type reviews. We suggest the video retention should be at least 60 business days.



**Section 7: Modify.** The fee should be set at the actual incremental cost of copying the raw video or raw audio without labor or fringe benefits charges. These recordings are unequivocally in the public interest, and the statutory language refers to FOIA even though the bill also affirms that the records are not "public records." FOIA specifically allows for no fees unless it would result in an "unreasonably high cost" to the public body and the public body "specifically identifies the nature of these unreasonably high costs." However, in our experience in many communities, fees are charged for all FOIA requests despite the law.

Why is it important to have these recordings be available to the public? Recent widely publicized incidents in Ferguson (Mo.), New York City, and this past week in North Charleston (S.C.) and California continue to raise questions about how a few law enforcement officers, in the heat of the moment, may use unnecessary force in arrests.

The Inkster police dash cam video of the arrest of a black man in January illustrate the importance of this video evidence. One of the officers involved in that beating has now been fired

Citizen cell phone video in North Charleston, S.C., is the only reason, the officer involved was quickly fired and placed under arrest, according to both the police chief and the mayor. Though an internal investigation may have eventually raised questions about eight shots fired into the back of a fleeing individual, the video provided proof that will eventually be scrutinized in court at the officer's murder trial.

After the widely publicized incidents in Ferguson and New York City last year, there is a perception that the United States has a real problem with police violence. According to an ACLU White Paper, in 2011, police killed six people in Australia, two in England, six in Germany and, according to an FBI Report, 404 in the United States (410 killings reported in 2012). The FBI's data compiled only "justifiable homicides," and the report counted "voluntarily submitted" data from just 750 of 17,000 law enforcement agencies. Attempts by journalists to compile more complete data by collating local news reports have resulted in estimates as high as 1,000 police killings per year in the United States. Fully a quarter of the deaths involved a white officer killing a black person."

The majority of law enforcement officers and agencies in Michigan and elsewhere are upstanding, conscientious public servants. However, there are some bad cops out there, and even substitute HB 4234, as currently written, would protect them and their departments from accountability by shielding essential public scrutiny of police actions. That in no way serves the public interest. And it in no way serves the taxpayers who ultimately pay the cost of police brutality jury verdicts.



Michigan should take a leadership role in creating reasonable and transparent laws on the use of body-worn cameras by law enforcement agencies in the state. HB 4234 needs to be amended and should not be exempted from the state FOIA. We ask you to share this letter with your colleagues on the Judiciary Committee and hope you consider our suggested changes.

The Michigan Coalition for Open Government is a tax exempt, Michigan nonprofit corporation founded to promote and protect transparency and accountability in the governments of the people, by the people and for the people at the local, state and federal levels.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Briggs-Bunting". The signature is fluid and cursive, with a large loop at the end.

Jane Briggs-Bunting  
President  
Michigan Coalition for Open Government  
[www.miopengov.org](http://www.miopengov.org)